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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,931	08/22/2003	Rejean Roy	247-1US	8272

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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/645,931

Applicant(s)

ROY, REJEAN

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-4,15-18** are rejected under 35 U.S.C. 102(b) as being anticipated by Strebelow (WO95/26623).

For claim 1, Strebelow teaches a hydroponic growing unit having a base 41, the outer periphery of the base defined by an outer, vertical base wall (see fig. 2) the base shaped to hold liquid; a vertical plant support wall 2, forming a generally annular enclosure, the support wall mounted on the base wall to extend above the base, the support wall having a plurality of mounting means (see figs. 2-3) on its inner surface, and to enclose space above the base; and a least one opening (figs. 1-2, one those panels 2 opens up for access therein at ref. 7) in the support wall providing access to the enclosed space and to the inner surface of the support wall, the opening normally closed by at least one wall panel forming part of the support wall.

For claim 2, Strebelow teaches wherein the outer periphery of the base is generally circular (see fig. 1).

For claim 3, Strebelow teaches wherein the base is in the shape of an annular trough, the trough having inner and outer vertical side walls and a bottom wall joining the side walls with the outer side of the trough forming the base wall (see figs. 1-2).

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For claim 4, Strebelow teaches wherein the trough has a well formed therein, the well is sized to receive a pump (see figs. 1-2).

For claims 15 & 17, Strebelow teaches wherein the mounting means mount plant growing blocks 61 arranged about the inner surface of the support wall, the mounting means located at the top of the support wall (the highest one of the shelves).

For claims 16 & 18, Strebelow teaches a watering inlet 82 associated with each mounting means, the inlets supported by the top of the support wall and connected via tubing 81 and a pump (page 10, lines 30-35) to the liquid in the base.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 5-8,10-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Strebelow (as above) in view of Ishimoto (US 5228235).

For claims 5-7,10-12, Strebelow teaches a light support 9,91 but not extending diametrically across the inner side wall of the trough. In addition, Strebelow is silent about the light source being one that is a tubular light means extending up from the middle of the light support, the light means located in the center of the support wall, and the light means comprises a transparent tube having a light source at each end, and the light source support means at each end, the light source support means being open to pass air through the light means.

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Ishimoto teaches a hydroponic unit comprising a tubular light means 14,141 extending up from the middle of the light support, the light means located in the center of the support wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a tubular light means as taught by Ishimoto in the hydroponic system of Strebelow in order to protect the light bulb and to prevent direct heat coming from the light bulb to the plants. In addition, it would have been an obvious substitution of functional equivalent to substitute the light configuration of Strebelow as modified by Ishimoto with one wherein the light means comprises a transparent tube having a light source at each end, and light source support means at each end, the light source support means being open to pass air through it, since both types would perform to provide light to the plants therein.

For claims 8 & 13, Strebelow as modified by Ishimoto (emphasis on Strebelow) teaches ventilating unit 74 but not specifically a ventilating fan at the bottom of the tube. It would have been an obvious substitution of functional equivalent to substitute the ventilating unit of Strebelow as modified by Ishimoto with one having a ventilating fan at the bottom of the tube, since both types of ventilation system would perform to cool the plants therein from the hot light source.

5. **Claims 9 & 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Strebelow as modified by Ishimoto as applied to claims 1,3,5-7 above, and further in view of DeMarco (US 4850135).

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Strebelow as modified by Ishimoto is silent about a top light support mounted on the top of the support wall and supporting the top end of a light source centrally within the support wall.

DeMarco teaches a plant unit comprising a top light support 60 mounted on the top of the support wall and supporting the top end of a light source 56 centrally within the support wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a top light support as taught by DeMarco in the system of Strebelow as modified by Ishimoto in order to further secure the light in the central area of the unit.

6. **Claims 21 & 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Strebelow (as above) in view of Martin (US 3458951).

Strebelow is silent about the support wall has two diametrically opposed openings therein, each opening closed by two end wall panels, each end wall panel hinged to the support wall, the end wall panels forming part of the support wall when closed.

Martin teaches a hydroponic unit wherein the support wall has two diametrically opposed openings (doors 158,160) therein, each opening closed by two end wall panels, each end wall panel hinged to the support wall, the end wall panels forming part of the support wall when closed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the support wall has two diametrically opposed openings (doors 158,160) therein, each opening closed by two end wall panels, each end wall panel hinged to the support wall, the end wall panels

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forming part of the support wall when closed as taught by Martin in the unit of Strebelow in order to provide a larger access area into the interior of the unit.

***Allowable Subject Matter***

7. **Claims 19 & 20** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn